



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

STATE BOARD OF DENTISTRY

124 HALSEY STREET, 6TH FLOOR, NEWARK NJ

October 17, 2002

JAMES E. MCGREEVEY  
Governor

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Philip Schrager, D.D.S.  
622 George Road  
Park Plaza  
North Brunswick, New Jersey 08901-1175

CERTIFIED TRUE COPY

Dear Mr. Bertucio and Dr. Schrager:

Please be advised that because of a clerical error, specifically the mailing of the final order in this matter to the wrong attorney, the Board has determined that the active suspension shall commence on November 11, 2002, which date approximates 30 days after receipt of the final order by Dr. Schrager and counsel.

This is consistent with the Board's intention to permit Dr. Schrager a sufficient opportunity to manage his patients' care prior to the commencement of the active suspension and with the conversation between Mr. Bertucio and me.

Very truly yours,  
STATE BOARD OF DENTISTRY

Kevin B. Earle  
Executive Director

cc Michelle Albertson, DAG  
Nancy Costello Miller, DAG  
Douglas Harper, DAG

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ON 9-25-02 cm

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
NEW JERSEY STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF :  
PHILIP G. SCHRAGER, D.D.S. : Administrative Action  
License No. DI-10171 : FINAL ORDER  
TO PRACTICE DENTISTRY IN THE :  
STATE OF NEW JERSEY :  
\_\_\_\_\_ :

**PROCEDURAL HISTORY**

This matter involves the proposed revocation or suspension of the license of Philip G. Schrager, D.D.S. ("Respondent") to practice dentistry in the State of New Jersey pursuant to N.J.S.A. 45:1-21(b), (e) and (f) and N.J.S.A. 45:6-3.

On May 11, 2001, the Attorney General ("Petitioner") filed a Complaint against Respondent in connection with Respondent's criminal conviction for violation of N.J.S.A. 45:1-21(b), (e) and (f). The complaint alleged that Respondent's acts giving rise to the criminal conviction and guilty plea constitute a crime of moral turpitude and relate adversely to the practice of dentistry in violation of N.J.S.A. 45:1-21(f). The complaint further alleged that Respondent's acts and guilty plea constitute the use and employment of dishonesty, fraud, deception, misrepresentation, false promise and false pretense in violation of N.J.S.A. 45:1-

21(b) and professional misconduct in violation of N.J.S.A. 45:1-21(e). Finally, the complaint alleged that Respondent's acts and guilty plea evidence a failure to maintain good moral character, an ongoing requirement for maintaining licensure pursuant to N.J.S.A. 45:6-3. The relief requested was suspension or revocation of his license; assessment of costs and attorneys fees pursuant to N.J.S.A. 45:1-25 and such other relief as the Board deemed appropriate to safeguard the public's health, safety and welfare.

By letter dated May 16, 2001 from David Lustbader, Esquire, then-attorney for the Respondent, an extension of time to file an answer was requested. Thereafter, on June 11, 2001, Respondent filed an answer to the complaint. An amended answer was filed on June 13, 2001. The amended answer stated that Respondent had entered into a guilty plea upon advice of his counsel, but that Respondent did not acknowledge the correctness of each word in the accusation since there was a settlement. Respondent denied that he had violated any of the Board's statutes and/or regulations. As a separate defense, Respondent stated that he had paid restitution of \$36,362.15 within ten days of its imposition to several dental insurance carriers. Respondent further stated that he timely paid \$20,000.00 in civil penalties to the State.

The hearing, scheduled for November 7, 2001 at 2:00 p.m., was adjourned at Mr. Lustbader's request due to a trial date conflict.

By letter dated November 1, 2001 from Respondent's new attorney, Edward C. Bertucio, Jr., Esquire, the Board was advised that Respondent was in the process of filing a motion to set aside his guilty plea in the Superior Court, Law Division, Middlesex County.\* A substitution of attorney for the Respondent was filed on November 7, 2001.

The hearing was rescheduled for Wednesday, December 19, 2001 at 1:00 p.m. By letter dated November 29, 2001, Respondent's counsel requested an adjournment of the December 19, 2001 hearing for at least 30 days to permit Respondent to obtain additional discovery and arrange the attendance of fact and expert witnesses. The Petitioner filed an objection noting the length of time since the filing of the complaint, the fact that discovery had been given promptly to Respondent's counsel, and that there was a prior adjournment of the hearing at Respondent's request. After reviewing the submissions, the Board decided to proceed with the hearing, which continued on February 20, 2002 and April 17, 2002.

The hearing was conducted in two phases, the first phase to determine whether the Respondent violated the Board's statutes and/or regulations and the second phase to determine the penalty

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\*The parties have represented to the Board that the Superior Court denied Respondent's motion to vacate/withdraw his guilty plea. Respondent has appealed that decision to the Appellate Division.

after presentation of mitigating evidence. The initial phase was concluded on February 20, 2002 at which time the Board determined that the Respondent had violated N.J.S.A. 45:1-21(b), (e) and (f). However, at the request of Respondent, the Board continued the hearing as to the second phase to allow Respondent additional time to present mitigating evidence and await the outcome of the Respondent's motion to vacate his guilty plea in the Middlesex county Superior Court. The second phase of the hearing concluded on April 17, 2002.

#### DISCUSSION

Respondent testified that he graduated from New York University College of Dentistry in 1973. He thereafter served with the United States Army from 1973 through 1975, at which time he was honorably discharged. Thereafter, Respondent opened a dental practice in New York, which was dissolved in 1977. From 1977 to the present, Respondent has practiced in his office in North Brunswick, New Jersey. The Respondent has been licensed to practice dentistry in the State of New Jersey since 1974. There are no prior disciplinary actions.

On or about November 16, 2000, Respondent entered a guilty plea in the Superior Court of New Jersey, Middlesex County. The Respondent pled guilty to Accusation No. 375-11-00-A Count 1

charging him with theft by deception, N.J.S.A. 2C:20-4, a crime of the third degree, in that:

... on diverse dates up through May 1996, at the Township of North Brunswick, in the County of Middlesex, elsewhere, and within the jurisdiction of this Court, did commit the crime of theft by deception in excess of \$500, that is, the said Philip Schrager, owner of North Brunswick Dental Center, Philip G. Schrager, D.D.S., P.A., did purposely obtain money in excess of \$500 from various dental plans and/or dental insurance carriers for services rendered, by creating and reinforcing the false impression that the dental claim forms which were submitted for payment of dental services rendered accurately reflected the dates of services, types of services and procedures rendered by the dentist;

WHEREAS, IN TRUTH AND IN FACT, as the said PHILIP SCHRAGER well knew, the dental claim forms submitted for payment of dental services rendered did not accurately reflect the dates of services, types of services and procedures rendered by the dentist, contrary to the provisions of N.J.S.A. 2C:20-4, and against the peace of this State, the government and dignity of the same.

(Exhibits S-1 and S-2)

During the guilty plea hearing (Exhibit S-4), Respondent specifically admitted to the following acts:

Q. Now according to the form you are pleading guilty to Accusation 375-11-00 Count 1 charging you with the third degree crime of theft by deception. Third degree crimes have a maximum of a statutory term of five years in jail, a maximum \$15,000 fine and \$155 in mandatory assessments, okay. Do you understand that?

A. Yes, sir.

Q. Do you know what theft by deception is, the nature of that charge?

A. Yes, sir.

Q. All right. Are you pleading guilty to that charge?

A. Yes, sir.

Q. Are you guilty?

A. Yes, sir.

THE COURT: You want to take the factual basis, Mr. Struben?

MR. STRUBEN: Yes, I would, your Honor.

VOIR-DIRE BY MR. STRUBEN:

Q. Mr.. Schrager, you are a dentist?

A. Yes, sir.

Q. And are you pleading guilty to theft by deception based on certain acts that occurred on diverse dates up and through May of 1996?

A. Yes.

Q. And those acts occurred in the Township of North Brunswick where you maintain a dental practice?

A. Yes.

Q. And the thefts by deception that occurred were in excess of \$500?

A. Yes, they were.

Q. And you obtained money from various dental plans and/or dental insurance companies for services rendered by creating and reinforcing a false impression based on dental claims which you submitted for services, is that correct?

A. Yes.

Q. And those forms did not accurately reflect dates of services and types of services and procedures that were rendered by you?

A. Yes.

Q. And you submitted those forms to various dental plans or dental insurance companies for payment?

A. Yes.

Q. And you knew that certain forms that you submitted didn't accurately reflect proper dates of service or proper types of services and procedures rendered by you?

A. Yes.

Q. And you did that and expected to get paid by the various dental plans or dental insurance carriers?

A. Yes, I did.

Mr. Struben: that is all I have.

As the result of Respondent's guilty plea, on February 1, 2001 he was sentenced to probation for a term of one (1) year; payment of restitution totaling \$36,362.15 to 16 insurance carriers; payment of a civil fraud penalty of \$20,000; and other payments totaling approximately \$155.00. Probation was to terminate when all financial obligations were satisfied.

Additionally, Respondent entered into a Consent Order with the New Jersey Office of the Insurance Fraud Prosecutor dated November 21, 2000 wherein he admitted to knowingly submitting, or causing to be submitted, bills for services not rendered to various New Jersey insurance companies between 1992-1995 in violation of N.J.S.A. 17:33A-1 et seq. A civil administrative penalty of \$20,000.00 due within 30 days of the entry of the Order was imposed



upon Respondent. Further, Respondent agreed that the Consent Order may be used against him in any civil or administrative proceeding related to a violation of N.J.S.A. 17:33A-1 et seq., including a license suspension or revocation proceeding.

Respondent argues that he entered into a guilty plea upon advice of his attorney and disputes the acts giving rise to his criminal conviction. He also argues that he was not provided with information from the prosecutor which would have impacted upon his decision to enter into a plea agreement. However, Respondent's attempts to vacate his guilty plea have thus far been unsuccessful.

In a disciplinary proceeding, a licensee may not present evidence which would contradict the conviction. State of NJ, Dept. of Law & Public Safety v. Gonzalez, 142 N.J. 618, 631-32 (1995). Although the underlying facts of the conviction may be examined as to mitigation of the penalty, the fact of guilt will not be retried in a disciplinary proceeding. Id. (quoting In re Rosen, 88 N.J. 1, 3 (1981)). However, facts that relate to the surrounding circumstances of the offense to support a claim of rehabilitation may be presented except to the extent they are inconsistent with the elements of the disqualifying offense. Gonzalez, 142 N.J. at 633. In attorney disciplinary proceedings, a criminal conviction is conclusive proof of guilt. Id. at 631. See also In Re Connor, 124 N.J. 18, 21 (1991); In Re Mirabelli, 79 N.J. 597, 602 (1979),

In the Matter of Tonzola, 162 N.J. 296, 304 (2000); In the Matter of Margrabia, Jr., 150 N.J. 198 (1997).

As a result, the Board rejects any attempt by Respondent to provide evidence or testimony inconsistent with the criminal conviction and the acts giving rise to his criminal conviction as admitted at the guilty plea hearing and in the Consent Order entered into with the Office of the Insurance Fraud Prosecutor. The Board considers his criminal acts, which have been determined in violation of the New Jersey Insurance Fraud Prevention Act\*, to be very serious and concurs that "[i]nsurance fraud is a problem of massive proportions that currently results in substantial and unnecessary costs to the general public in the form of increased rates." Merin v. Maglaki, 126 N.J. 430 (1992). Respondent's criminal conviction also undermines the public trust and confidence in the dentistry profession.

Accordingly, based on Respondent's criminal conviction and, further, based on his own admissions at the guilty plea hearing on November 16, 2000 and in the Consent Order dated November 21, 2000,

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\*According to N.J.S.A. 17:33A-2, the purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims.

the Board finds that the Respondent has violated N.J.S.A. 45:1-21(b), (e) and (f). More specifically, N.J.S.A. 45:1-21 states in relevant part:

A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:

\* \* \*

b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

\* \* \*

e. Has engaged in professional or occupational misconduct as may be determined by the board;

\* \* \*

f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction . . .

The Board concludes that Respondent's criminal conviction of theft by deception and admissions of insurance fraud constitute the use or employment of dishonesty, fraud, deception and misrepresentation, in violation of N.J.S.A. 45:1-21(b) and also constitute professional misconduct in violation of N.J.S.A. 45:1-21(e).

The Board also concludes that Respondent's criminal conviction is a crime involving moral turpitude and a crime which adversely relates to the practice of dentistry in violation of N.J.S.A. 45:1-

21(f). Respondent's acts were committed in and as the result of his dental practice and, therefore, relate adversely to the practice of dentistry. As to moral turpitude, in State Board of Medical Examiners v. Weiner, 68 N.J. Super. 468, 483 (App. Div. 1961), rev'd on other grounds, 41 N.J. 56 (1963) moral turpitude was defined as follows:

What is "moral turpitude"? It has been defined as an "act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, to society in general, contrary to the accepted and customary rule of right and duty between man and man"....

Weiner also noted that moral turpitude includes "any crime in which fraud is an ingredient" and "everything done contrary to justice, honesty, modesty, or good morals." Id. at 484. Therefore, Respondent's criminal conviction of theft by deception and admissions of insurance fraud constitute crimes of moral turpitude.

Respondent has also argued that double jeopardy applies to any civil penalty to be imposed since both civil and criminal penalties were imposed in connection with the criminal proceeding. While both penalties shall be addressed, notably the criminal penalty represents restitution to the various insurance companies, defrauded by Respondent.

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution protects against multiple punishments for the same offense. State v. Widmaier, 157 N.J. 475, 489-90

(1999). The constitutional guarantees of the Double Jeopardy Clause apply to the states through the Due Process Clause of the Fourteenth Amendment. Id. at 490. Protections against double jeopardy under the New Jersey Constitution, New Jersey Const. Art. I, § 11, consistently have been interpreted to be co-extensive with the protections afforded by the federal clause. Id.

In deciding whether a particular statute is civil or criminal, courts must determine whether the sanctions imposed for a violation are tantamount to a criminal penalty. State v. Widmaier, 157 N.J. 475, 492 (1999). The Court in Widmaier stated that although discerning whether a statute is civil or criminal initially is a matter of statutory construction, for double jeopardy purposes, the legislature's description of a sanction as civil does not foreclose the possibility that it has a punitive character. Id.

However, where the legislature has expressly or impliedly indicated an intention to establish a civil penalty, the court must inquire further whether the statutory scheme is so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty. Id. at 492-3. When there are ambiguities in the nature of the statute, the Court has set forth various factors to evaluate whether the statutory scheme is in its purpose or effect punitive and thereby criminal, or remedial and thereby civil. Id. at 493. In applying those factors, a court

must evaluate the statute on its face and may override legislative classification of a statute as "civil" only by the the clearest of proof. Id. The Court, citing Hudson v. United States, 522 U.S. 93, 118 S.Ct. 488 (1997), reestablished the traditional rule that whether a sanction is subject to double jeopardy restraints depends upon whether the sanction essentially constitutes a criminal penalty. Id. at 494.

The applicable statute in the present case is the Uniform Enforcement Act, N.J.S.A. 45:1-14 et. seq. The Legislature expressly declared that "[t]his act is deemed remedial and the provisions hereof should be afforded a liberal construction." N.J.S.A. 45:1-25(a) specifically states that any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation. There are no ambiguities in the statute. It is a remedial statute and any penalty to be imposed is a "civil penalty". Further, this disciplinary proceeding is a "civil action" resulting in a civil penalty.

The Board in this case has chosen not to impose the maximum statutory penalties permitted by the statute for these violations.\* The statute also expressly provides that costs may be recouped by the Board including, but not limited to, costs of investigation, expert witness fees and costs, attorney fees and costs, and transcript costs. N.J.S.A. 45:1-21(d).

The Board recognizes that the Respondent paid a \$20,000 civil penalty pursuant to the Consent Order with the New Jersey Office of Insurance Fraud Prosecutor, which was incorporated into the Judgment of Conviction. That is separate and distinct from the penalty to be imposed in this disciplinary proceeding. It was imposed for a violation of the New Jersey Insurance Fraud Prevention Act and, presumably, was rationally related to expenses incurred by the government in the course of its investigation and prosecution of Respondent's fraudulent claims. Merin v. Maglaki, 126 N.J. 430 (1992). The civil penalty in the present case is imposed on Respondent due to his violations of the statutes which the Board administers and enforces.

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\*N.J.S.A. 45:1-25(a) provides that any person who engages in any conduct in violation of any provision of an act or regulation administered by a board shall, in addition to any other sanctions provided herein, be liable to a civil penalty of not more than \$10,000 for the first violation and not more than \$20,000 for the second and each subsequent violation.

A civil penalty in this disciplinary proceeding further maintains the public trust and confidence. It protects the public from continued misconduct and ensures future compliance with the Board's statutes and regulations, all of which serve civil - not criminal justice - goals. However, even if it could be argued that there is a punitive or deterrent aspect to the civil penalty, it is clearly only one aspect, subordinate to the essential objectives, and is insufficient to reclassify a penalty from "civil" to "criminal." Finally, the United States Supreme Court in Hudson stated that "[w]e have since recognized that all civil penalties have some deterrent effect. If a sanction must be 'solely' remedial ... to avoid implicating the Double Jeopardy Clause, then no civil penalties are beyond the scope of the Clause." Hudson v. United States, supra., 118 S.Ct. at 495. Therefore, the Board finds that double jeopardy does not apply in this case.

#### **CONCLUSION**

The Board's mandate is to protect the public's health, safety and welfare. Each disciplinary case must be judged on its own facts with the goal of protecting the interests of the public, including maintaining the public trust and confidence in the profession, while giving consideration to the interests of the individual involved. See In the Matter of Mischlich, 60 N.J. 590, 593 (1972); In the Matter of Margrabia, 150 N.J. 198, 201 (1997)



(the primary purpose of discipline is not to punish the licensee, but to preserve the public confidence).

In mitigation, Respondent has provided numerous letters and testimony from colleagues and patients showing evidence of a good character and reputation. The Board finds the witnesses presented by Respondent to be credible. Further, from the testimony of Respondent and Mrs. Schrager, it appears that Respondent has taken the necessary steps to ensure that such conduct as described in the guilty plea and Consent Order is not repeated. The criminal acts did not relate to Respondent's competence as a dentist, although they arise as the result of his practice of dentistry. Respondent has no prior disciplinary history.

Given the circumstances in Respondent's practice and the length of time since the acts underlying the guilty plea, the Board is persuaded that the conduct is not likely to recur and, therefore, will impose a relatively brief period of active suspension and a civil penalty lower than permitted by the Legislature for such offenses. While the Board considered a longer period of active suspension with lower monetary penalties than it imposed herein, in balancing the public's interest in permitting a competent dentist to continue his practice of dentistry and the need to maintain the trust and confidence of the public, the Board has determined the entry of this Order is appropriate.

THEREFORE, IT IS ON THIS 25<sup>th</sup> day of September 2002  
ORDERED\*:

1. Respondent's license to practice dentistry shall be, and hereby is, suspended for a period of three (3) years, seventy-five (75) days of which shall be an active suspension. The period of active suspension shall commence thirty (30) days from the entry of this Order.

2. Respondent shall pay a civil penalty pursuant to N.J.S.A. 45:1-25(a) in the amount of fifteen thousand dollars (\$15,000.00), which penalty reflects:

- (a) \$5,000.00 for violation of N.J.S.A. 45:1-21(b);
- (b) \$5,000.00 for violation of N.J.S.A. 45:1-21(e); and
- (c) \$5,000.00 for violation of N.J.S.A. 45:1-21(f).

3. Respondent shall pay attorney fees of \$9,540.00 and costs of \$2,284.26 pursuant to N.J.S.A. 45:1-25(d) for a total amount of \$11,824.26.

4. Respondent shall take the "ProBE" or "Prime" ethics course and provide proof of his full attendance at, and successful completion of, this course within six (6) months of the entry of this Order; and

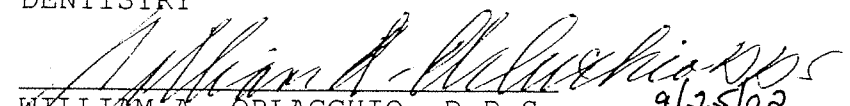
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\*The Board received an application for a stay of its order pending appeal; but based on the failure of Respondent to adequately state any basis for this request, the motion is denied.

5. Respondent shall submit to random audits of his practice for a period of three (3) years from entry of the Order at his sole expense.

NEW JERSEY STATE BOARD OF  
DENTISTRY

BY:

  
WILLIAM A. ORLACCHIO, D.D.S.  
Board President

9/25/02